REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

SL HARBOR BULK TERMINAL CORPORATION, Petitioner,	**CTA CASE NO. 10250**
	Present:
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 26 2024 1:30 p.m.

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DECISION

FERRER-FLORES, J.:

Before this Court is the *Amended Petition for Review* filed on September 15, 2020 praying for the issuance of a tax credit certificate in the amount of **₱3,100,000.00**,[1] allegedly representing petitioner's erroneously paid excise tax.[2]

THE PARTIES

Petitioner **SL Harbor Bulk Terminal Corporation** is a domestic corporation organized and existing under and by virtue of Philippine laws, duly registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 29, and with principal office at Block 4 Lots 10 and 11, Manila Harbor Center, North Harbor, Barangay 128, Zone 10, Tondo, Manila.[3] It is engaged in the business of handling, storing, distributing, importing, selling and marketing of petroleum products, petroleum products

[1] *Amended Petition for Review,* Docket – Vol. III, pp. 862 to 880.
[2] Summary of the Case, Pre-Trial Order dated September 29, 2021, Docket – Vol. IV, p. 368.
[3] Par. 2(a), *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. IV, p. 1394.

mixed with fuel additives, ethanol fuel grade products, and coco methyl ester (cme), and of blending and/or manufacturing of blended fuel oil grades.[4]

Respondent **Commissioner of Internal Revenue** (CIR) is the duly appointed Commissioner of the BIR, vested under appropriate laws with the authority to carry out the functions, duties, and responsibilities of his office, including the authority to refund and/or credit taxes under Section 204 of the National Internal Revenue Code (NIRC) of 1997,[5] as amended.[6]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On January 20, 2020, petitioner filed an *Administrative Claim for Tax Credit* with Revenue District Officer Teresita R. Lumayag of RDO No. 29, Manila, covering excise taxes paid for the first quarter of 2018.[7]

PROCEEDINGS BEFORE THIS COURT

On January 24, 2020, petitioner filed a *Petition for Review*.[8]

Thereafter, petitioner filed a *Motion to Admit Amended Petition for Review*[9] on February 18, 2020 attaching therewith its *Amended Petition for Review*,[10] which primarily amends, among others, the amount of excise tax claimed for refund from ₱13,361,877.50 to ₱12,347,485.00.

On February 26, 2020, respondent filed a *Motion for Extension of Time to File Answer*,[11] which the Court granted in the Order dated March 2, 2020.[12] Respondent then filed his *Answer* on March 12, 2020.[13]

In the Resolution dated July 10, 2020,[14] the Court granted petitioner's *Motion to Admit Amended Petition for Review* and admitted the *Amended Petition for Review* and, consequently, granted respondent a fifteen (15)-day period to file his *Amended Answer* to the *Amended Petition for Review*.

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[4] Exhibit "30", Docket – Vol. IV, pp. 1557 to 1564.
[5] Republic Act (R.A.) No. 8424, as amended.
[6] Par. 2(b), JSFI, Docket – Vol. IV, p. 1394.
[7] Par. 2(c), JSFI, Docket – Vol. IV, p. 1395.
[8] Docket – Vol. I, pp. 6 to 21.
[9] Docket – Vol. II, pp. 403 to 406.
[10] Docket – Vol. II, pp. 407 to 424.
[11] Docket – Vol. III, pp. 842 to 844.
[12] Docket – Vol. III, p. 845.
[13] Docket – Vol. III, pp. 846 to 852.
[14] Resolution dated July 10, 2020, Docket – Vol. III, pp. 855 to 856.

On September 15, 2020, petitioner filed a *Motion for Leave to Admit Amended Petition for Review*,[15] attaching therewith its *Amended Petition for Review*,[16] which further amends the amount of its claim for tax credit to ₱3,100,000.00.

Respondent filed an *Ex-Parte Manifestation* on September 24, 2020,[17] stating therein that he served and filed his *Amended Answer* through registered mail on September 22, 2020 which the Court received on October 7, 2020.[18]

On October 23, 2020, respondent filed a *Manifestation with Motion for Extension to File Comment*,[19] which the Court noted and granted in the Order dated October 27, 2020.[20]

In lieu of a comment, respondent posted on November 3, 2020 a *Manifestation (To Petitioner's Motion for Leave to Admit Amended Petition for Review)*, stating that he submits petitioner's motion to the sound discretion of the Court.[21] The Court then noted said *Manifestation* and submitted petitioner's *Motion* for resolution, in the Resolution dated November 20, 2020.[22]

In the Resolution dated January 7, 2021,[23] the Court granted petitioner's *Motion for Leave to Admit Amended Petition for Review*, and admitted the *Amended Petition for Review*.

On January 22, 2021, respondent transmitted to the Court the *BIR Records* of the case, consisting of 1,519 pages, in three (3) folders.[24]

Thereafter, on January 28, 2021, respondent filed his *Amended Answer*,[25] interposing his special and affirmative defenses.

The Pre-Trial Conference was initially set on February 24, 2021,[26] but was later reset to March 24, 2021,[27] and further reset to and held on July 5,

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[15] Docket – Vol. III, pp. 858 to 861.
[16] Docket – Vol. III, pp. 862 to 880.
[17] Docket – Vol. III, pp. 1085 to 1086
[18] Docket – Vol. III, pp. 1095 to 1102.
[19] Docket – Vol. III, pp.1107 to 1109.
[20] Docket – Vol. III, p. 1110.
[21] Docket – Vol. III, pp. 1111 to 1113.
[22] Docket – Vol. III, p. 1116.
[23] Docket – Vol. III, pp. 1118 to 1121.
[24] *Compliance* dated January 21, 2021, Docket – Vol. III, pp. 1122 to 1123.
[25] Docket – Vol. III, pp. 1125 to 1135.
[26] Notice of Pre-Trial Conference dated January 29, 2021, Docket – Vol. III, pp. 1136 to 1137.
[27] Notice of Resetting dated February 10, 2021, Docket – Vol. III, p. 1138

2021.[28] Prior thereto, petitioner and respondent filed their *Pre-Trial Briefs* on March 22, 2021[29] and March 23, 2021,[30] respectively.

On July 27, 2021, the Court received the parties' *Joint Stipulations of Facts and Issues*, filed via accredited courier,[31] which was approved and adopted by the Court in the Pre-Trial Order dated September 29, 2021,[32] thereby deeming the termination of the Pre-Trial.

Trial then ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner offered the testimonies of the following individuals, namely: (1) Ms. Shiela Mary A. Ahing,[33] petitioner's Finance Manager; (2) Mr. Christian Ivan R. Requinta,[34] petitioner's Trading Head; (3) Ms. Jenny V. Catriz,[35] petitioner's Billing Head; and, (4) Ms. Ma. Alma C. Sese,[36] the Court-commissioned Independent Certified Public Accountant (ICPA).[37]

The *Report* of the said ICPA was posted on December 1, 2021.[38]

On April 4, 2022, petitioner filed its *Formal Offer of Evidence*,[39] to which respondent filed his *Comment/Opposition [Re: Petitioner's Formal Offer of Evidence dated 04 April 2022]* on May 13, 2022.[40] In the Resolution dated June 7, 2022,[41] the Court admitted petitioner's offered exhibits, *except* for:

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[28] Notice of Resetting dated May 17, 2021, Docket – Vol. III, p. 1338; Minutes of the hearing held on, and Order dated, July 5, 2021, Docket – Vol. III, pp. 1339, and 1342, respectively.
[29] Petitioner's *Pre-Trial Brief*, Docket – Vol. III, pp. 1139 to 1154.
[30] Respondent's *Pre-Trial Brief*, Docket – Vol. III, pp. 1331 to 1336.
[31] Docket – Vol. IV, pp. 1362 to 1365.
[32] Docket – Vol. IV, pp. 1368 to 1374.
[33] Exhibit "P-19", Docket – Vol. III, pp. 1237 to 1252; Minutes of the hearing held on, and Order dated, March 14, 2022, Docket – Vol. IV, pp. 1499 to 1501.
[34] Exhibit "P-20", Docket – Vol. III, pp. 1283 to 1292; Minutes of the hearing held on, and Order dated, March 14, 2022, Docket – Vol. IV, pp. 1499 to 1501.
[35] Exhibit "P-21", Docket – Vol. III, pp. 1300 to 1309; Minutes of the hearing held on, and Order dated, March 14, 2022, Docket – Vol. IV, pp. 1499 to 1501.
[36] Exhibit "P-28", Docket – Vol. IV, pp. 1478 to 1494; Minutes of the hearing held on, and Order dated, February 21, 2022, Docket – Vol. IV, pp. 1496 to 1497; Minutes of the hearing held on, and Order dated, March 14, 2022, Docket – Vol. IV, pp. 1499 to 1501.
[37] Order dated October 6, 2021, Docket – Vol. IV, p. 1399.
[38] Exhibit "P-29", Docket – Vol. IV, pp. 1465 to 1473 (Attached to *Compliance* dated December 1, 2021, Docket – Vol. IV, pp. 1461 to 1463).
[39] Docket – Vol. IV, pp. 1502 to 1519.
[40] Docket – Vol. IV, pp. 1731 to 1733.
[41] Docket – Vol. IV, pp. 1736 to 1739.

1. Exhibits "P-1", "P-1-1", "P-2" and "P-2-1", "P-12", "P-12-1", "P-16", "P-16-1", "P-16-2", "P-17", and "P-17-1", for failure to present the original for comparison; and,

2. Exhibits "P-33-2.1" and "P-33-3.4", for failure to correspond, as the documents marked were very blurred that it cannot be determined whether it is the same document described in the *Formal Offer of Evidence*.

For his part, respondent presented the testimony of Revenue Officer Loreto P. Tilbe, Jr.[42]

On June 24, 2022, petitioner posted its *Omnibus Motion (Re: Resolution dated 07 June 2022)*,[43] to which respondent filed his *Comment/Opposition [Re: Petitioner's Omnibus Motion dated 24 June 2022]* on September 19, 2022.[44]

On the other hand, on July 5, 2022, respondent filed his *Formal Offer of Evidence*,[45] to which petitioner filed its *Comment/Objection (Re: Formal Offer of Evidence dated 04 July 2022)*[46] on July 25, 2022. In the Resolution dated September 12, 2022,[47] the Court admitted respondent's offered exhibits, *except* for Exhibits "R-1" and "R-2", for failure to submit the duly marked exhibits.

Respondent then filed his *Omnibus Motion [Re: Respondent's Formal Offer of Evidence]* on October 3, 2022,[48] without petitioner's comment despite due notice.[49]

In the Resolution dated March 6, 2023,[50] the Court, *inter alia*:

(1) granted petitioner's *Omnibus Motion*;
(2) admitted Exhibits "P-1", "P-1-1", "P-2" and "P-2-1", "P-12", "P-12-1", "P-16", "P-16-1", "P-16-2", "P-17", "P-17-1", "P-33-2.1" and "P-33-3.4";

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42 Exhibit "R-6" and "R-7", Docket – Vol. III, pp. 1316 to 1321; Minutes of the hearing held on and Order dated June 13, 2022, Docket – Vol. IV, pp. 1740 to 1741.
43 Docket – Vol. IV, pp. 1758 to 1765.
44 Docket – Vol. IV, pp. 1815 to 1820.
45 Docket – Vol. IV, pp. 1747 to 1750.
46 Docket – Vol. IV, pp. 1805 to 1808.
47 Docket – Vol. IV pp. 1813 to 1814.
48 Docket – Vol. IV, pp. 1823 to 1825
49 Records Verification Report dated January 10, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. IV, p. 1843.
50 Docket – Vol. IV, pp. 1845 to 1857.

(3) remarked Exhibits "P-28" and "P-28-1" as Exhibits "P-42" and "P-42-1", respectively; and,
(4) partially granted respondent's *Omnibus Motion*, allowing the remarking of Exhibits "R-1" and "R-2" in a commissioner's hearing.

On April 3, 2023, respondent filed his *Supplemental Formal Offer of Evidence.*[51]

Petitioner filed its *Memorandum* on April 11, 2023.[52]

Meanwhile, in the Resolution dated May 25, 2023,[53] the Court granted respondent's *Omnibus Motion*, and admitted Exhibits "R-1" and "R-2".

Subsequently, respondent filed his *Memorandum* on July 12, 2023.[54]

On July 28, 2023, the case was considered submitted for decision.[55]

THE STIPULATED ISSUE

As stipulated, the sole issue for the Court's determination is as follows:

> Whether or not petitioner is entitled to a tax credit of alleged erroneously paid Excise Tax in the aggregate amount [of] Three Million One Hundred Thousand Pesos (Php3,100,000.00) covering excise taxes paid for first quarter of 2018.[56]

Petitioner's arguments:[57]

Petitioner argues that the Court has jurisdiction over the instant petition; and that it is entitled to a tax credit for the erroneously paid excise tax in the aggregate amount of ₱1,650,000.00 covering the period of January 1, 2018 to March 31, 2018, representing the excise tax on the bunker fuel and diesel which it imported and allegedly established to have been used to sell 660,000 liters of Bunker Fuel Oil (BFO) and Special Fuel Oil (SFO) to entities

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[51] Docket – Vol. IV, pp. 1890 to 1892.
[52] Docket – Vol. IV, pp. 1861 to 1888.
[53] Docket – Vol. IV, pp. 1895 to 1897.
[54] Docket – Vol. IV, pp. 1901 to 1916.
[55] Docket – Vol. IV, p. 1918.
[56] Par. 3(a), JSFI, Docket – Vol. IV, p. 1395.
[57] Petitioner's *Memorandum*, Docket – Vol. IV, pp. 1861 to 1888.

registered with the Subic Bay Metropolitan Authority (SBMA) and Philippine Economic Zone Authority (PEZA).

Respondent's counter-arguments:[58]

Respondent contends that petitioner's administrative and judicial claims for tax credit are filed beyond the prescriptive period, thus, the Court has no jurisdiction over the instant petition; that, assuming *arguendo* that the Court has jurisdiction over the instant petition, the excise tax paid by petitioner is not erroneously or illegally collected; that petitioner is not entitled to its claim for refund; and that petitioner is not the proper party to claim for tax refund.

THE COURT'S RULING

The *Amended Petition for Review* must be denied for lack of merit.

The Court has jurisdiction over the present petition; the administrative and judicial claims were timely filed.

Respondent argues that this Court has no jurisdiction over the instant petition on the basis that premature invocation of court's intervention is fatal to petitioner's cause of action, considering respondent was not given sufficient time to determine the propriety of petitioner's claim. He further points out that the *Amended Petition for Review*, which was filed on September 15, 2020, is treated as an entirely new petition for review, thus, petitioner's claim for refund was filed beyond the two (2) year prescriptive period.

On the other hand, petitioner contends otherwise, claiming that its administrative and judicial claims for tax credit were timely filed.

We agree with petitioner.

Sections 204(C) and 229 of the NIRC of 1997, as amended, read:

> SEC. 204. *Authority of the Commissioner to Compromise/Abate and Refund or Credit Taxes.* — The Commissioner may —

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[58] Respondent's *Memorandum*, Docket – Vol. IV, pp. 1901 to 1916.

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any **national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,** until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis supplied)*

The above-stated provisions are clear: within two (2) years from the date of payment of tax, the claimant must first file an administrative claim with respondent before filing its judicial claim with the courts of law. Both claims, however, must be filed within a two (2)-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional, and thus, the Court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time. It is worthy to stress that, as for the judicial claim, tax law even explicitly provides that it be filed within two (2) years from payment of the tax "regardless of any supervening cause that may arise after payment."[59]

Moreover, the foregoing provisions allow the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to

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[59] *Commissioner of Internal Revenue vs. San Miguel Corporation, etseq.*, G.R. Nos. 180740 and 180910, November 11, 2019.

taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[60]

Thus, for the present claim for refund to prosper, petitioner must not only establish that it has timely filed its refund claim, it must likewise prove that the subject excise taxes paid are "erroneous or illegal".

In this case, the amount of ₱3,100,000.00 being claimed for tax credit allegedly came from excise taxes on importation of bunker fuel and diesel paid on January 24, 2018, January 26, 2018, February 1, 2018, and March 20, 2018. Below are the pertinent dates relative to petitioner's claim for tax credit:

Date of Payment	Amount of Excise Tax Paid	Two (2)-Year Prescriptive Period	Date of Administrative Claim	Date of Judicial Claim
January 24, 2018[61]	₱44,764,809.00	January 24, 2020	January 20, 2020[62]	January 24, 2020[63]
January 26, 2018[64]	77,923,980.00	January 26, 2020		
February 1, 2018[65]	113,147,265.00	February 1, 2020		
March 20, 2018[66]	113,658,812.00	March 20, 2020		
Total	**₱349,494,866.00**			

As can be gleaned from the foregoing, since the administrative and judicial claims were within the two (2)-year prescriptive period, the Court has jurisdiction to entertain the present judicial claim.

As to respondent's contention that the premature invocation of the court's intervention is fatal to petitioner's cause of action as the present case was filed barely four (4) days after petitioner filed its administrative claim for refund, it should be noted that the law only requires that an administrative claim be priorly filed, to give the BIR at the administrative level an opportunity to act on said claim. In other words, for as long as the administrative claim and judicial claim were filed within the two (2)-year prescriptive period, then there was exhaustion of administrative remedies.[67] The taxpayer need not wait for respondent to act on the administrative claim for refund.[68]

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[60] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.
[61] Exhibit "P-33-2.5", Docket – Vol. IV, p. 1604, USB.
[62] Par. 3, JSFI, Docket – Vol. IV, p. 1395; Exhibits "P-10" and "11", Docket – Vol. IV, pp. 1549 to 1554, and 1555, respectively.
[63] Docket – Vol. I, pp. 6 to 21.
[64] Exhibit "P-33-1.5", Docket – Vol. IV, p. 1596, USB
[65] Exhibit "P-33-3.5", Docket – Vol. IV, p. 1613, USB.
[66] Exhibit "P-33-4.5", Docket – Vol. IV, p. 1621, USB.
[67] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.
[68] *Id.*

Respondent also claims that the amended petition for review was filed beyond the two (2)-year prescriptive period, invoking the ruling in *Ching vs. Court of Appeals*,[69] that pleadings superseded or amended disappear from the records and ceases its status as a pleading and is deemed withdrawn and disappears from the record.

We disagree with respondent.

Section 8, Rule 10 of the Rules of Court, as amended,[70] provides:

> Section 8. *Effect of amended pleadings* — An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be offered in evidence against the pleader, and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived.

Based on the foregoing, an amended complaint supersedes an original one. Consequently, the original complaint is deemed withdrawn and no longer considered part of the record. The settled rule is that the filing of an amended pleading does not retroact to the date of the filing of the original pleading; hence, the statute of limitation runs until the submission of the amendment. It is true that as an exception, the Supreme Court has held that an amendment which merely supplements and amplifies facts originally alleged in the complaint relates back to the date of the commencement of the action, and is not barred by the statute of limitations which expired after the service of the original complaint. Thus, **when the amended complaint does not introduce new issues, cause of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed.**[71]

In this case, a comparison of petitioner's *Amended Petition for Review* and its original *Petition for Review* reveals the following pertinent changes or amendments, to wit: [72]

Paragraph	Petition for Review filed on January 24, 2020	Amended Petition for Review filed on September 15, 2020
1.1	x x x...erroneously or wrongfully collected Excise Tax in the amount of ₱13,361,877.50	x x x...erroneously or wrongfully collected Excise Tax in the amount of ₱3,100,000.00
3.3	A portion of the Excise Tax which petitioner paid subsequently	A portion of the Excise Tax which petitioner paid subsequently

[69] G.R. No. 110844, April 27, 2000.
[70] A.M. No. 19-10-20-SC.
[71] *Alpha Plus International Enterprises Corp. vs. Philippine Charter Insurance Corp., et al.,* G.R. No. 203756, February 10, 2021.
[72] Pars. 1.1, 3.3 and 4.6 of the original *Petition for Review* and *Amended Petition for Review*, Docket – Vol. I, pp. 6, 10 and 12 and Docket – Vol. III, pp. 862, 866 and 869, respectively.

Paragraph	Petition for Review filed on January 24, 2020	Amended Petition for Review filed on September 15, 2020
	became erroneous when it sold a substantial volume of bunker fuel to excise tax-exempt entities registered with either Subic Bay Metropolitan Association (SBMA), Philippine Economic Zone Authority (PEZA) or Zamboanga City Special Economic Zone (ZAMBO Ecozone).	became erroneous when it sold a substantial volume of bunker fuel to excise tax-exempt entities registered with either <u>Subic Bay Metropolitan Association (SBMA) or the Philippine Economic Zone Authority (PEZA)</u>.
4.6	During the same period of January to March 2018, petitioner, out of the 139,797,946.60 L of bunker fuel it has imported, sold a total of 5,344,751 L thereof to various tax exempt entities registered with either the SBMA, PEZA or ZAMBO Ecozone...x x x	During the same period of <u>February to March 2018</u>, petitioner, out of the 139,797,946.60 L of bunker fuel it has imported, sold a total of <u>1,240,000 L</u> thereof to various tax exempt entities registered with either the <u>SBMA or PEZA</u>...x x x

Considering that the above amendments do not introduce new issues, causes of actions, or demands, the suit is deemed to have been commenced on January 24, 2020, the date the original *Petition for Review* was filed, and not on the date of the filing of the *Amended Petition for Review* on September 15, 2020.

That being settled, we now proceed to evaluate petitioner's compliance with the requirements for the subject refund.

Requisites to claim a tax credit or refund of erroneously or illegally collected excise taxes paid on imported fuel sold to tax-exempt entities

Petitioner's claim for issuance of a tax credit certificate is governed by the following provisions of the NIRC of 1997, as amended, *viz.*:

> SEC. 129. *Goods Subject to Excise Taxes.* — **<u>Excise taxes apply</u> to goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and <u>to things imported</u>**. The excise tax imposed herein shall be in addition to the value-added tax imposed under Title IV.
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> xxx xxx xxx
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> SEC. 131. *Payment of Excise Taxes on Imported Articles.* —

> (A) *Persons Liable.* — **Excise taxes on imported articles shall be paid by the owner or importer to the Customs Officers, conformably with the regulations of the Department of Finance and before the release of such articles from the customhouse,** or by the person who is found in possession of articles which are exempt from excise taxes other than those legally entitled to exemption.
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> xxx xxx xxx
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> SEC. 135. *Petroleum Products Sold to International Carriers and Exempt Entities or Agencies.* — **Petroleum products sold to the following are exempt from excise tax:**
>
> (a) xxx
>
> (b) xxx
>
> (c) **Entities which are by law exempt from direct and indirect taxes.**

Based on the foregoing provisions, and the earlier discussion on prescription, the following are the basic requirements for the entitlement to the claim for refund or issuance of tax credit certificate:

1. That petitioner's claim was filed within the two-year prescriptive period as provided for under Sections 204(C) and 229 of the NIRC of 1997;

2. That the entity to which the petitioner sold the petroleum products is an entity exempt by law from indirect and direct taxes; and,

3. That petitioner is the statutory taxpayer and actually paid the claimed excise taxes on the same petroleum products sold to the exempt entity.

In *Chevron Philippines, Inc. vs. Commissioner of Internal Revenue (Chevron)*,[73] the Supreme Court held that excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies named in Section 135 of the NIRC of 1997, as amended, exempt from excise tax is deemed illegal or erroneous, to wit:

> Excise tax on petroleum products is essentially a tax on property, the direct liability for which pertains to the statutory taxpayer (*i.e.*, manufacturer, producer or importer). **Any excise tax paid by the statutory taxpayer on petroleum products sold to any of the entities or agencies**

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[73] G.R. No. 210836, September 1, 2015.

> **named in Section 135 of the *National Internal Revenue Code* (NIRC) exempt from excise tax is deemed illegal or erroneous; and should be credited or refunded to the payor pursuant to Section 204 of the NIRC. This is because the exemption granted under Section 135 of the NIRC must be construed in favor of the property itself, that is, the petroleum products**. *(Emphasis supplied)*

In addition, as clarified by the Supreme Court in *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*,[74] considering that the status of the petroleum products as tax-exempt solidifies upon the sale to any of the entities enumerated under Section 135, any excise taxes which were previously paid thereon would then be considered as "erroneously or illegally collected," and therefore, subject to refund. It was further held therein that the tax exemption under Section 135 of the NIRC of 1997, as amended, must correspondingly benefit the one who actually bears the liability to pay the same (*i.e.*, the importers/manufacturers of petroleum products sold to international carriers, among others), and not the one who simply bears the economic burden thereof (*i.e.*, the purchasers of the products, such as international carriers).

Inasmuch as the *first* requirement has already been established, we shall proceed with the *second* requirement for the entitlement to the claim for refund or issuance of tax credit certificate.

Only a portion of the subject petroleum products were sold to a duly registered PEZA entity exempt by law from indirect and direct taxes.

To recall, petitioner allegedly sold BFO and SFO to tax-exempt entities who are purportedly SBMA and PEZA-registered entities.

In relation thereto, Section 12(c) of Republic Act (R.A.) No. 7227,[75] as amended by R.A. No. 9400,[76] provides for the tax exemption of SBMA-registered entities:

> SEC. 12. *Subic Special Economic Zone.* — xxx
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> xxx xxx xxx

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[74] G.R. No. 211303, June 15, 2021.

[75] An Act Accelerating the Conversion of Military Reservations Into Other Productive Uses, Creating the Bases Conversion and Development Authority for the Purpose, Providing Funds Therefor and for Other Purpose.

[76] An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes.

> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, no national and local taxes shall be imposed within the Subic Special Economic Zone. In lieu of said taxes, a five percent (5%) tax on gross income earned shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two percent (2%) to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone... *(Emphasis supplied)*

Moreover, Sections 3(h) and 21 of the Implementing Rules and Regulations (IRR) of R.A. No. 7227,[77] provide:

> Sec. 3. *Definitions.* For purposes of these Rules these terms shall be understood to have the following meanings:
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> xxx xxx xxx
>
> h. ***Certificate of Registration*** **– refers to the certificate issued by the SBMA representing the registration of the business entity as an SBF Enterprise.**
>
> xxx xxx xxx
>
> Sec. 21. *Effect of Issuance of Certificates.* – **Issuance of the Certificate of Registration** or Residency to an SBF Enterprise or Resident, respectively, **<u>shall entitle and subject</u> the business enterprise or resident <u>to all the benefits</u> and obligations under the Act and these Rules**, and other regulations that may be promulgated by the SBMA, subject to the provisions of Section 5 and 13 hereof. *(Emphasis and underscoring supplied)*

Based on the foregoing, entities within the Subic Special Economic Zone (SSEZ) enjoy national and local tax exemption. Such exemption, however, takes effect only upon the SBMA's issuance of a *Certificate of Registration* or *Certificate of Registration and Tax Exemption* (CRTE) to a business enterprise within the SSEZ. In other words, it is only at the date of issuance of the *Certificate of Registration* or CRTE, which represents the registration of the concerned business enterprise, will the latter be entitled to the tax exemption granted under R.A. No. 7227, as amended.

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[77] Rules And Regulations to Implement Republic Act No. 7916, Otherwise Known as "The Special Economic Zone Act Of 1995", May 17, 1995.

On the other hand, Section 24 of R.A. No. 7916,[78] as amended by R.A. No. 8748,[79] provides for the tax exemption of PEZA-registered entities as follows:

> SEC. 24. *Exemption from National and Local Taxes.* – Except for real property taxes on land owned by developers, **no taxes, local and national, shall be imposed on business establishments operating within the ECOZONE. In lieu thereof, five percent (5%) of the gross income earned by all business enterprises within the ECOZONE shall be paid and remitted** as follows:
>
> (a) Three percent (3%) to the National Government;
>
> (b) Two percent (2%) which shall be directly remitted by the business establishments to the treasurer's office of the municipality or city where the enterprise is located. *(Emphasis supplied)*

Relative thereto, Section 2 of Rule I and Sections 2 and 5 of Rule XIII of the IRR of R.A. No. 7916[80] provides for the registration and entitlement to incentives of PEZA-registered entities:

> PART I
> *General Provisions*
>
> RULE I
> *Definitions and Basic Guidelines*
>
> xxx xxx xxx
>
> s. "**Certificate of Registration**" shall mean the **certificate issued by the PEZA to an ECOZONE Enterprise upon its registration.**
>
> t. "**Date of Registration**" shall refer to the **date appearing in the certificate of registration.**
>
> xxx xxx xxx
>
> PART VII
> *Incentives to ECOZONE Enterprises*
>
> RULE XIII
> *Application and Entitlement*
>
> xxx xxx xxx

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[78] An Act Providing For The Legal Framework And Mechanisms For The Creation, Operation, Administration, and Coordination Of Special Economic Zones in the Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (Peza), And For Other Purposes.

[79] An Act Amending Republic Act No. 7916, Otherwise Known As The "Special Economic Zone Act Of 1995."

[80] Rules And Regulations to Implement Republic Act No. 7916, Otherwise Known as "The Special Economic Zone Act Of 1995", May 17, 1995.

> SECTION 2. *Scope of Entitlement.* — New or expanding ECOZONE Developers/Operators, Export, Free Trade, Domestic Market, Utilities, Facilities and Tourism Enterprises, except ECOZONE Service Enterprises as defined under Section 2(p), Rule I of these Rules, registered on or after the effectivity of these Rules, shall be entitled to the fiscal incentives provided in Sections 24 and 42 of the Act.
>
> xxx xxx xxx
>
> SECTION 5. Limitation of Entitlement to Incentives. - **Incentives granted by the PEZA shall apply only to registered operations of the ECOZONE Enterprises and only during the period of its registration with PEZA.** *(Emphasis supplied)*

Pursuant to the aforequoted provisions, business establishments operating within the ECOZONE are exempt from national and local taxes, which include excise taxes.[81] In lieu thereof, the said enterprises shall pay five percent (5%) of its gross income to the national government and the municipality or city where it is located.

In this case, petitioner allegedly sold BFO and SFO to the following entities in the months of **January to March 2018** whose relevant documents reveal their respective registration status as follows:[82]

Customer Name	**Registration Document**	**Exhibit Reference**	**Period**
Johnson Controls-Hitachi Air Conditioning Philippines, Inc. (**Johnson Controls**)	*Certificate of Registration and Tax Exemption Subic Bay Freeport Enterprise Certificate No. 1997-0022)*	"P-38-1"[83]	June 18, 2018 to June 17, 2021
JX Nippon Mining & Metals Philippines, Inc. (**JX Nippon**)	*Amended Certificate of Registration No. 96-080; PEZA Certification No. 2018-0596 (PEZA-ERD Form No. 00-01)*	"P-38-2"[84]	Valid for the year 2018

With regard to <u>Johnson Controls</u>, it appears that, when the imported petroleum products were sold to it on various dates in March 2018, its registration with the SBMA was not yet effective. Hence, the *second* requisite was not met insofar as the excise tax related to the petroleum products sold to Johnson Controls.

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[81] Refer to Section 21(e), NIRC of 1997.
[82] Exhibit "P-36", Docket – Vol. IV, p. 1643, USB.
[83] Docket – Vol. IV, pp. 1720 to 1721, USB.
[84] Docket – Vol. IV, pp. 1722 to 1723, USB.

On the other hand, as to JX Nippon, as per the certifications presented, it is indeed duly registered with the PEZA at the time the petroleum products were sold to it by the petitioner. As such, the *second* requisite was complied with in the case of the petroleum products sold to JX Nippon.

Hence, the excise taxes paid by petitioner on petroleum products sold to JX Nippon, a PEZA-registered entity, may be considered as erroneously or illegally collected and subject to refund provided the rest of the requisites are complied with.

Petitioner, however, failed to prove the alleged erroneous or illegal excise tax payments on the same petroleum products sold to the tax-exempt entities.

As to the *third* requisite, petitioner claims to have paid the following excise tax on its importations of BFO and automotive diesel oil in the 1st quarter of 2018:[85]

Date Paid[86]	Quantity [in Liters (L)]	Rate	Excise Tax
January 24, 2018	17,905,923.60	₱2.50	₱ 44,764,809.00
January 26, 2018	31,169,592.00	2.50	77,923,980.00
February 1, 2018	45,258,906.00	2.50	113,147,265.00
March 20, 2018	45,463,525.00	2.50	113,658,812.50
Total	**139,797,946.60**		**₱ 349,494,866.50**

In order to be refundable, however, petitioner must prove that the fuel oil sold to tax-exempt entities came from the importations on which petitioner paid excise taxes on January 24, 2018, January 26, 2018, February 1, 2018 and March 20, 2018.

Notably, petitioner's importations are supported by *Commercial Invoices, Bills of Lading, Assessment Notices, Import Entry Declarations, Authority to Release Imported Goods* (BIR Form No. 1918), and *Statements of Settlement of Duties and Taxes* for January to March 2018.[87]

Evaluation of the subject supporting documents reveals that these are all in the name of petitioner, particularly, the *Statements of Settlement of*

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[85] *Amended Petition for Review*, Docket – Vol. III, pp. 868 to 869; See also Exhibit "P-29", p. 3, Docket – Vol. III, p. 1467 and Exhibit "P-33", Docket – Vol. IV, p. 1592, USB.
[86] Expressed in mm/dd/yyyy.
[87] Exhibits "P-33-1.2" to "P-33-4.5", Docket – Vol. IV, pp. 1593 to 1621, USB.

Duties and Taxes. Petitioner is indeed the statutory taxpayer and actually paid the claimed excise taxes.

For the period of February to March of 2018, petitioner sold 1,240,000 liters of fuel oil to tax-exempt entities in the total amount of ₱17,477,153.02, broken down as follows:[88]

Exhibit Ref.[89]	Date	Sales Invoice No.	Registered Buyer	Quantity (L)	Sales
	February 2, 2018	28876	JX Nippon	560,000.00	-
"P-36-1.1"	March 31, 2018	28877	JX Nippon	620,000.00	₱16,151,385.02
	March 3, 2018	27132	Johnson Controls	20,000.00	-
"P-36-2.1"	March 15, 2018	27408	Johnson Controls	20,000.00	662,884.00
"P-36-3.1"	March 26, 2018	27442	Johnson Controls	20,000.00	662,884.00
			Total	**1,240,000.00**	**₱17,477,153.02**

Hence, petitioner's claim of ₱3,100,000.00 is computed by multiplying 1,240,000 liters of fuel oil by the excise tax rate of ₱2.50.

The Court-commissioned ICPA, Ms. Sese, reported the following findings:[90]

Sales to tax-exempt customers per petitioner declaration	1,240,000 L
Sales to tax-exempt customers based on complete supporting documents	620,000 L
Difference	**620,000 L**

The above discrepancy was accounted for as follows:

1. *Sales Invoice Nos. 27408* and *27442* are not supported by withdrawal certificates and delivery note; and,

2. *Sales Invoice Nos. 28876* and *27132* are not qualified for tax refund and/or tax credit, since the inventory as of December 2017 were only totally sold on March 15, 2018, and the BFO and SFO sold on February 2, 2018 and March 3, 2018 were from the purchases of 2017 which were not subjected to excise tax.[91]

Correspondingly, excise tax of **₱1,550,000.00** must be disallowed as computed below: [92]

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[88] Exhibit "P-36", USB.
[89] USB marked as Exhibit "P-29-2".
[90] Exhibit "P-29", p. 7, Docket – Vol. IV, p. 1471.
[91] *Ibid.*
[92] See also Exhibit "P-29", p. 7, Docket – Vol. IV, p. 1471.

Particulars	Amount
Liters of fuel sold not supported/qualified for tax refund per ICPA verification	620,000*
Multiplied by: Excise tax rate	₱2.50
Amount disallowed	**₱1,550,000.00**

**Includes fuel sold to Johnson Controls which was not yet registered with the SBMA at the time of sale.*

As it is, only the sale of 620,000 liters of fuel oil to JX Nippon on March 31, 2018 is properly supported. For the excise tax thereon to be refundable, **it must be determined that the subject sales came from the importations with excise taxes paid on January 24, 2018, January 26, 2018, February 1, 2018, and March 20, 2018.**

Petitioner submitted, among others, the following documents, *viz.*:[93]

Exhibit Ref.	Documentary Evidence
"P-32"	Petitioner's List of Ending Inventory as of 31 December 2017
"P-32-1"	Petitioner's Validation of Inventory as of 31 December 2017
"P-32-1-1 to P-32-1-21"	Petitioner's Official Register Book and Schedule of Receipts and Removal for December 2017
"P-32-2"	Petitioner's List of Ending Inventory as of 31 December 2017 duly submitted to BIR
"P-32-3"	Cargo Outturn Certificate
"P-32-4"	Bill of Lading with No. BS20122017BC dated 20 December 2017
"P-33"	Importation Schedule 2018 (First Quarter)
"P-33-1.2"	Bill of Lading with No. 18004B dated 17 January 2018
"P-33-1.3"	Assessment Notice issued by the BOC dated 26 January 2018
"P-33-1.4"	Import Entry Declaration issued by the BOC dated 26 January 2018
"P-33-1.5"	Statement of Settlement of Duties and Taxes issued by the BOC dated 26 January 2018
"P-33-2.1"	Commercial Invoice dated 18 January 2018 issued by PetroChina International (Singapore) Pte. Ltd.
"P-33-2.2"	Bill of Lading with No. 18004A dated 17 January 2018
"P-33-2.3"	Assessment Notice issued by the BOC dated 23 January 2018
"P-33-2.4"	Import Entry Declaration issued by the BOC dated 22 January 2018
"P-33-2.5"	Statement of Settlement of Duties and Taxes issued by the BOC dated 24 January 2018
"P-33-3.1"	Commercial Invoice dated 29 January 2018 issued by Mercuria Energy Trading Pte. Ltd.
"P-33-3.2"	Bill of Lading with No. E7675
"P-33-3.3"	Assessment Notice issued by the BOC dated 01 February 2018
"P-33-3.4"	Tentative Import Entry Declaration issued by the BOC dated 01 February 2018
"P-33-3.5"	Statement of Settlement of Duties and Taxes issued by the BOC dated 01 February 2018
"P-33-4.1"	Commercial Invoice dated 14 March 2018
"P-33-4.2"	Bill of Lading with No. E7636
"P-33-4.3"	Temporary Assessment Notice issued by the BOC dated 15 March 2018
"P-33-4.4"	Import Entry Declaration issued by the BOC dated 15 March 2018
"P-33-4.5"	Statement of Settlement of Duties and Taxes issued by the BOC dated 20 March 2018
"P-34"	Summary of Sales per product for the 1st quarter of 2018
"P-34-1 to P-34-1C"	ATP with corresponding Printer's Certificate of Receipts and/or Invoice and Sworn Statement
"P-34-2"	Comparative presentation of Sales vs. Revenue reported in Quarterly Income Tax (1st Quarter)

[93] *Formal Offer of Evidence*, Docket – Vol. IV, pp. 1509 to 1513.

Exhibit Ref.	Documentary Evidence
"P-34-3"	Summary of Missing Invoices for 1st quarter of 2018
"P-34-4"	Summary of Sold Inventories from 01 January 2018 to 15 March 2018 sourced from 2017 purchases
"P-35"	Validation of Inventory for 1st Quarter 2018
"P-35-1"	Summary of Local Purchases from 01 January 2018 to 15 March 2018
"P-35-2"	Summary of Local Purchases from 16 March 2018 to 29 March 2018
"P-35-3"	Summary of Sold Inventories from 16 March 2018 to 31 March 2018 which come from 2018 purchases
"P-36"	Schedule of Sales to Tax Exempt Entities for the period of 02 February 2018 to 26 March 2018
"P-36-1.1, P-36-2.1 and P-36-3.1"	Sales Invoices for the period of 02 February 2018 to 26 March 2018
"P-36-1.2 to P-36-1.2AD"	Withdrawal Certificates for the period of 02 February 2018 to 26 March 2018
"P-36-1.3 to P-36-1.3AD"	Delivery Notes for the period of 02 February 2018 to 26 March 2018
"P-36-1.4 to P-36-4.4"	Proof of Collection for sales made to tax exempt entities for the period of 02 Feb 2018 to 26 March 2018

The above pieces of evidence submitted, however, are not enough to allow the Court to trace the movement of petitioner's fuel oil inventory using the first-in, first-out (FIFO) method.[94] Petitioner submitted the *Official Register Books* only for the month of **December 2017**.[95] To be sure, it should have provided its properly supported fuel oil inventory record and submitted the sales invoices and other pertinent documents of **all its sales for the 1st quarter of 2018** for the Court to properly determine that the fuel oil sold to tax-exempt entities came from the imported lot that petitioner paid for excise taxes on January 24, 2018,[96] January 26, 2018,[97] February 1, 2018[98] and March 20, 2018.[99] It is also worthy to note that the ICPA reported a significant number of missing sales invoices for the 1st quarter of 2018.[100]

While the sale of 620,000 liters of petroleum products to JX Nippon on March 31, 2018 may have been amply substantiated as per ICPA verification, the evidence presented by the petitioner still failed to sufficiently prove that the same came from petitioner's importation for which it paid excise taxes on January 24, 2018, January 26, 2018, February 1, 2018, and March 20, 2018. As such, the equivalent excise tax thereon amounting to **₱1,550,000.00**[101] cannot be considered refundable as petitioner fell short in proving compliance with the *third* requirement. Consequently, its claim for issuance of tax credit certificate cannot prosper.

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[94] Pursuant to Section 8(b) of Revenue Regulations No. 2-2018.
[95] Exhibit "P-6", Docket – Vol. IV, pp. 1521 to 1548.
[96] Exhibit "P-33-2.5", USB marked as Exhibit "P-29-2".
[97] Exhibit "P-33-1.5", USB marked as Exhibit "P-29-2".
[98] Exhibit "P-33-3.5", USB marked as Exhibit "P-29-2".
[99] Exhibit "P-33-4.5", USB marked as Exhibit "P-29-2".
[100] Exhibit "P-34-3", USB marked as Exhibit "P-29-2".
[101] Computed as follows: [620,000 liters x ₱2.50 excise tax per liter]

In *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*,[102] the Supreme Court declared:

> On a final note, the Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also **the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven**. The burden is on the taxpayer to show that he (or she) has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed. xxx *(Emphasis supplied)*

Accordingly, it is incumbent upon petitioner to clearly show the factual basis for claiming that it is entitled to a tax credit which, as discussed above, it failed to do so in the present case.

In fine, the Court finds that petitioner is not entitled to the tax credit subject of the present claim.

WHEREFORE, in light of the foregoing considerations, the present *Amended Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[102] G.R. No. 222428, February 19, 2018.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Division Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice